



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

May 9, 2016

VIA: CERTIFIED MAIL: 7014 2870 0001 3378 2580 & Personal Service

Clay Jonak  
100 Tennant Way  
Longview, WA 98632

VIA: CERTIFIED MAIL: 7014 2870 0001 3378 2603

Roger Ison  
P.O. Box 1524  
St. Helens, OR 97051

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-NWR-16-002

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$110,677 for violations occurring at the submerged land lease site you both control located near river mile 75 on the Columbia River, approximately 0.5 miles upstream and to the southeast of Goble, Oregon. Specifically, the attached Notice and Order cite and penalize you both, as owners and operators of the leasehold and the vessels contained there, for violations of Oregon laws that prohibit: the accumulation of solid waste, the open accumulation of friable asbestos-containing material (ACM), and the release of petroleum-based fuel into waters of the state.

DEQ issued this penalty for solid waste violations because it is against the law to dispose of solid wastes anywhere except at a permitted disposal facility, such as a landfill or transfer station. Illegal dumps diminish livability, depress the value of the surrounding land and can threaten human health and the environment by creating habitat for disease carrying vectors and polluting ground and surface water.

DEQ issued this penalty for asbestos violations because the ACM in the marine vessels at the site have the potential to expose workers, tenants, and members of the public to asbestos fibers. Asbestos is a hazardous air contaminant proven to cause lung cancer, mesothelioma and asbestosis for which there is no safe level of exposure. DEQ requires ACM to be securely packaged and appropriately disposed of in order to protect the public from asbestos exposure.

Given the age of the other vessels at the leasehold it is highly likely that there is asbestos present on the vessels in addition to what is cited in the Notice and Order. DEQ encourages you to limit access to the leasehold and cease your salvage activities to prevent further exposure of workers and the public to asbestos.

DEQ issued this penalty for the release of petroleum diesel fuel because discharging petroleum into waters of the state is a serious violation of Oregon environmental law. The spilling of oil or petroleum products into state waters has negative environmental impacts on aquatic life and ecosystems. DEQ is concerned with the adverse impacts and cumulative effects that numerous spills of this kind have on the water quality of the Columbia River.

Included in Section IV is an order requiring you to take certain specified actions to correct the violations cited in the Notice and Order. DEQ staff has previously requested that you take these corrective actions and you have largely ignored those requests. It is imperative that you work with DEQ and comply with DEQ's orders. Doing so may result in a reduction of the assessed civil penalties. Failure to do so may result in additional civil penalties.



\$56,677 of the civil penalty represents the economic benefit you gained by failing to have the known ACM abated. If you complete this abatement requirement, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Daniel Hough, DEQ, Northwest Region  
Zeb Bates, DEQ, Northwest Region  
Michael Greenburg, DEQ, Northwest Region  
John Koestler, DEQ, WQ, HQ  
Audrey O'Brien, DEQ, Northwest Region  
Clay Jonak, P.O. Box 1134, St. Helens, OR 97051

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 CLAY JONAK & ROGER ISON, ) ASSESSMENT AND ORDER  
5 individuals, )  
6 Respondents. ) CASE NO. LQ/SW-NWR-16-002

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) to Respondents, jointly and severally liable, pursuant to Oregon Revised Statutes  
10 (ORS) 468.100 and 468.126 through 468.140, ORS 459.995, ORS 468B.450(1), ORS Chapters 459,  
11 468A, 468B, and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, 208,  
12 and 248.

13 II. FINDINGS OF FACT

14 1. On or about February 24, 2012, Respondents became assignees of lease #ML-6681 of  
15 approximately 3.89 acres of state-owned submerged land in the Columbia River, located near river mile  
16 75, approximately .5 miles upstream and southeast of Goble, Oregon (hereafter "the leasehold").

17 2. On or about September 10, 2013, Respondents entered into lease agreement #20960-ML  
18 with the State of Oregon for the leasehold.

19 3. DEQ conducted an inspection of the leasehold on March 6, 2013. During that inspection  
20 DEQ staff observed approximately seven vessels and barges at the leasehold, including the vessels  
21 "River Queen," "HV Newell" and the "Amazon."

22 4. DEQ conducted an inspection of the leasehold on May 19, 2015, and observed that the  
23 number of marine vessels at the leasehold had increased to approximately 27 marine vessels, including  
24 the dredge "Multnomah."

25 5. At all material times and through the present, Respondents have been and are the owners  
26 and the operators of the marine vessels and the materials contained therein at the leasehold.

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1           6. Respondents have been engaged in commercial activities at the leasehold, restoring some of  
2 the vessels for hobby, as well as conducting salvage activities on some of the vessels for income.

3           7. DEQ staff conducted an inspection of the leasehold and the marine vessels on June 30,  
4 2015. During the June 30, 2015 inspection DEQ staff observed approximately 10,000 cubic yards of  
5 materials on board the vessels at the leasehold, including storage tanks, totes, gas cylinders, buckets  
6 with unknown contents, inoperable recreational and commercial vehicles, inoperable engines, scrap  
7 metal, wood, tires, bricks, cement, plastic, appliances, sewage, and demolition and construction debris.  
8 DEQ staff observed that there were inoperable boats and parts with no clear evidence of maintenance,  
9 repair or restoration activities or any other productive use occurring.

10           8. DEQ has not issued Respondents a solid waste permit.

11           9. DEQ staff conducted an inspection of the leasehold on November 9, 2015. During the  
12 November 9, 2015, inspection DEQ staff observed three vessels with asbestos-containing material  
13 (ACM) in a friable condition: the "River Queen" contained approximately 15-25 yards of thermal  
14 system insulation (TSI) in the hull containing 15-50% chrysotile asbestos; the dredge "Multnomah"  
15 contained approximately 1,650-2,000 square feet of TSI in the boiler/mechanical room containing 30-  
16 50% chrysotile asbestos; and the "Amazon" contained 20-40 linear feet of TSI in the  
17 mechanical/engine room containing 30-70% chrysotile asbestos and 90% amosite asbestos.

18           10. The ACM observed during the inspection referenced in paragraph 9, above, was not  
19 securely enclosed and stored and was therefore openly accumulated as defined in OAR 340-248-  
20 0010(32).

21           11. On or about September 26, 2015, a vessel known as the HV Newell, owned and operated  
22 by Respondents, and moored at the leasehold, sank into the Columbia River, releasing approximately  
23 20 gallons of petroleum diesel fuel. The United States Coast Guard initiated some clean-up of the spill.  
24 As of the date of this Notice and Order, Respondents have failed to perform any clean up. The release  
25 of petroleum diesel fuel continued through at least November 9, 2015, when DEQ staff observed new  
26 sheens at the leasehold during an inspection.

27 ///

1 III. CONCLUSIONS

2 1. From on or before June 30, 2015, through the present, Respondents have violated OAR 340-  
3 093-0040(1) by disposing of solid waste in a location not authorized by DEQ as a solid waste disposal  
4 site. Specifically, Respondents disposed of the materials described in Section II, paragraph 7, which are  
5 considered "solid waste" as defined by OAR 340-093-0030(91), because they are useless and discarded  
6 materials, including useless or discarded commercial, industrial, demolition and construction materials,  
7 discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances and  
8 infectious biological waste at the leasehold. This is a Class I violation, according to OAR 340-012-  
9 0065(1)(c). DEQ hereby assesses a \$6,000 civil penalty for this violation.

10 2. From on or before November 9, 2015, through the present, Respondents violated OAR 340-  
11 248-0205(1) by openly accumulating friable ACM at the leasehold they operate as described in Section II,  
12 paragraphs 1-10, above. This is a Class I violation, according to OAR 340-012-0054(1)(m). DEQ hereby  
13 assesses a \$75,877 penalty for this violation.

14 3. From on or about September 26, 2015, through on or about November 9, 2015, Respondents  
15 violated ORS 468B.305 by releasing oil to the Columbia River, waters of the state, from the sinking of the  
16 vessel HV Newell. Respondents are liable for the discharge of oil under ORS 466.640 as they owned the  
17 released oil as described in Section 2, paragraph 1 above. Diesel fuel is "oil," pursuant to ORS  
18 466.605(8). A sheen is "pollution" under ORS 468B.005(5) as it would alter the physical or chemical  
19 properties of water. This is a Class I violation, according to OAR 340-012-0081(1)(c). DEQ hereby  
20 assesses a \$28,800 penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

22 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
23 hereby ORDERED TO: Pay a total civil penalty of \$110,677. The determinations of the civil penalties are  
24 attached as Exhibits Nos.1-3 and are incorporated as part of this Notice.

25 As provided in ORS 466.990(3) and (4), the civil penalty collected pursuant to this Notice and  
26 Order shall be deposited in the Oil and Hazardous Material Emergency Response and Remedial Action  
27 Fund established in ORS 466.670.

1 If you do not file a request for hearing as set forth in Section V below, your check or money order  
2 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
3 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,  
4 Conclusions and Order become final.

5 1. Within 20 days of a Final Order, submit a plan to DEQ for approval that describes how all  
6 solid waste at the leasehold will be recycled or disposed of within 90 days of DEQ's approval of the  
7 plan. The plan must identify which materials will be recycled, which will be disposed of, and to which  
8 DEQ-permitted facilities the materials will be sent, as well as how the materials will be managed until  
9 being recycled and disposed. The proposed plan must be sent to: Daniel Hough, DEQ Northwest  
10 Region, 700 NE Multnomah St., Suite 600, Portland, OR 97232-4100.

11 2. Within 20 days of a Final Order, submit documentation to DEQ that you hired a licensed  
12 asbestos abatement contractor to abate, within six (6) months of hiring, the openly accumulated ACM  
13 on the vessels River Queen, Amazon and dredge Multnomah. Written documentation must be sent to:  
14 Zeb Bates, DEQ Northwest Region, 700 NE Multnomah St., Suite 600, Portland, OR 97232-4100.

15 3. Within 20 days of a Final Order, submit documentation to DEQ that you hired a certified  
16 asbestos surveyor to survey, within six (6) months of hiring, the other vessels at the leasehold, not  
17 described in Section II, paragraph 9, to determine if additional ACM exists at the leasehold. Written  
18 documentation must be sent to: Zeb Bates, DEQ Northwest Region, 700 NE Multnomah St., Suite 600,  
19 Portland, OR 97232-4100.

20 4. Within 45 days of a Final Order, remove the HV Newell from the Columbia River. All  
21 removal operations must be done in accordance with all Oregon laws. The HV Newell must be  
22 disposed of as solid waste and included in the plan required by paragraph 1, above. Written  
23 documentation must be sent to: Daniel Hough, DEQ Northwest Region, 700 NE Multnomah St., Suite  
24 600, Portland, OR 97232-4100.

## 25 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

26 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
27 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you

1 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
2 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
3 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
4 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
5 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
6 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the  
7 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
8 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
9 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
10 association.

11 Active duty service-members have a right to stay proceedings under the federal Service  
12 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
13 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
14 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
15 <http://legalassistance.law.af.mil/content/locator.php>.

16 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
17 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
18 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
19 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
20 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
21 information submitted by you, as the record for purposes of proving a prima facie case.  
22  
23  
24

25 May 9, 2016

26 Date

25 Leah K. Feldon for

26 Leah K. Feldon, Manager

27 Office of Compliance and Enforcement

EXHIBIT NO. 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 1: Disposing of solid waste in a location not authorized as a solid waste disposal site, in violation of OAR 340-093-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because the volume of material disposed of by the Respondent exceeds 400 cubic yards. Respondent has disposed of approximately 10,000 cubic yards of solid waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(A).

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondents began disposing of the material from at least May 19, 2015, and have continued through the present, resulting in well over 28 occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. By accumulating derelict vessels and discarded and unusable materials at the leasehold between September 10, 2013, through the present, Respondents failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents have not addressed the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because the cost of cleanup is expected to exceed any economic benefit Respondents gained through this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 4 + 4 + 2)] + \$0  
= \$3,000 + [\$300 x 10] + \$0  
= \$3,000 + \$3,000 + \$0  
= \$6,000

EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 2: Openly accumulating friable asbestos-containing material (ACM), in violation of 340-248-0205(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(m).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A), because the amount of ACM that was openly accumulated was more than 160 square feet of ACM.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(B).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because the Respondent has no prior significant actions.

"H" is Respondents' history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is no prior history.

"O" is whether or not the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(C), because the violation occurred on more than 28 days. Respondents began openly accumulating ACM on or before November 9, 2015 through the present.

"M" is the mental state of the Respondents and receives a value of 8 pursuant to OAR 340-012-0145(5)(a)(C) because Respondents were reckless. Respondents stated to DEQ inspectors that they knew TSI contained asbestos. Respondents knew that there is asbestos openly accumulated at the leasehold yet Respondent has failed to have it abated or securely enclosed and stored thereby creating a substantial and unjustifiable risk that it would create a health hazard and violate Oregon environmental laws. Creating such a risk is a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondents' efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in

paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$56,677. This is the economic benefit Respondents have gained by avoiding paying approximately \$100,000 to have the asbestos at the leasehold properly abated by a licensed asbestos abatement contractor.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 8 + 2)] + \$56,677 \\ &= \$8,000 + [(\$800) \times (14)] + \$56,677 \\ &= \$8,000 + \$11,200 + \$56,677 \\ &= \$75,877 \end{aligned}$$

EXHIBIT NO. 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 3: Spilling or releasing oil which enters waters of the state, in violation of ORS 468B.305.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(1)(c).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondents violated an oil and hazardous material spill and release statute during a commercial activity or involving a derelict vessel over 35 feet in length, and Respondents are not a person listed in OAR 340-012-0140(2)(a)(N). Pursuant to OAR 340-012-0155(1)(b), because Respondents negligently caused or permitted the discharge of oil into waters of the state, DEQ will add the values set forth in 340-012-0155(1)(b)(B)(i) to determine the multiplier for the base penalty. The violation was caused recklessly therefore a value of 3 is assigned according to 340-012-0155(1)(b)(B)(i). This results in a base penalty of \$12,000.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. The release of petroleum diesel fuel to the Columbia River initially occurred on September 26, 2015. During an inspection on November 9, 2015 DEQ staff observed drops of oil coming to the surface of the river and new oil sheens appearing.

"M" is the mental state of the Respondents and receives a value of 8 according to OAR 340-012-0145(5)(c), because Respondents' conduct was reckless. During an inspection on the vessel on March 6, 2013, Respondent Jonak stated that he knew there was fuel or oils present on

the vessel. At that time the vessel hull leaked continuously and the vessel was at risk of sinking. DEQ staff told Respondents to remove all oil as soon as possible. By failing to take basic measures to remove fuel and oil from the HV Newell, a derelict vessel at risk for sinking, Respondents consciously disregarded a substantial and unjustifiable risk that the vessel would sink and release petroleum fluids into the Columbia River. The risk was a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondents' efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient evidence on which to base a finding that Respondents received an economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 8 + 2)] + \$0 \\ &= \$12,000 + [(\$1,200) \times (14)] + \$0 \\ &= \$12,000 + \$16,800 + \$0 \\ &= \$28,800 \end{aligned}$$